

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DORIS J. RUFF,	:	
	:	NO. 1:06-CV-00124
Petitioner,	:	
	:	
	:	ORDER
v.	:	
	:	
	:	
TRACY TYSON-PARKER,	:	
	:	
Respondent.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that Respondent's motion to dismiss be granted (doc. 7). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, GRANTS Respondent's motion to dismiss (doc. 6) and DENIES WITH PREJUDICE Petitioner's petitioner for writ of habeas corpus (doc. 1).

On March 9, 2006, pro se Petitioner Doris Ruff, then incarcerated at Franklin Pre-Release Center in Columbus, Ohio, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Id.). On June 28, 2006, Respondent filed a motion to dismiss, claiming that Petitioner had waived her claims for relief due to procedural defaults in state court (doc. 6). Petitioner did not file a response.

In his November 30, 2006 Report and Recommendation concerning Respondent's motion to dismiss, the Magistrate Judge

found Respondent's arguments well-taken (doc. 7). The Magistrate Judge thoroughly reviewed the procedural history of Petitioner's post-conviction relief efforts, as well as the applicable principles of waiver and exhaustion (Id.). The Magistrate Judge found that Petitioner's procedural defaults at the state court level barred her claims from review, absent a showing of cause and prejudice or that a "fundamental miscarriage of justice" would occur if the claims were not considered (Id.). The Magistrate Judge found that Petitioner could not establish either cause or that fundamental miscarriage of justice would occur (Id.).

Finally, the Magistrate Judge considered whether a remedy remained that would not be futile to pursue in state courts, finding that the petition should otherwise be subject to dismissal (Id.). The Magistrate Judge stated that an argument could be made that "the remedy of a delayed appeal to the Ohio Court of Appeals pursuant to Ohio R. App. P. 5(A) remains available to petitioner to pursue her claims challenging the post-release control portion of her sentence, which are alleged in Grounds Two and Three of the petition" (Id.). However, the Magistrate Judge concluded that these claims are clearly lacking in merit, and therefore, it would be futile to allow Petitioner to pursue them in state court (Id.). The Court finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct.

The Parties were served with the Report and

Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C).

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636(b), the COURT ADOPTS the Magistrate Judge's Report and Recommendation (doc. 7) in its entirety, and therefore, GRANTS Respondent's motion to dismiss (doc. 6), and DENIES WITH PREJUDICE Petitioner's writ of habeas corpus (doc. 1). Because "jurists of reason would not find it debatable as to whether this Court is correct in its procedural findings" the Court DOES NOT issue a certificate of appealability in this consolidated case. Finally, the Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal in forma pauperis upon a showing of financial necessity.

SO ORDERED.

Dated: February 8, 2007

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge